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Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TWB-204
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Ex Parte* -- Implementation of the Local Competition Provisions in the
Telecommunications Act of 1996 (CC Docket No. 96-98) and Inter-Carrier
Compensation for ISP-Bound Traffic (CC Docket No. 99-68)

Dear Ms. Salas:

In this letter, AT&T Corp. ("AT&T") responds to *ex parte* letters by incumbent local exchange carriers ("ILECs"), in which they claim that traffic bound for Internet Service Providers ("ISPs") costs much less to terminate than other kinds of local traffic.

The ILECs have made such claims in support of a new rule that would establish a "ratio cap" for reciprocal compensation and deem any traffic above the ratio interstate, ISP-bound traffic subject to a reduced rate of compensation. Under this approach, the ratio cap and the lower rates that would apply above the cap would be deliberately (and arbitrarily) set at levels designed to reduce the incumbent LECs' overall reciprocal compensation payments to competitive local exchange carriers ("CLECs"), apparently as a "transition" to a possible bill and keep system that would apply thereafter. There is no basis for any such rule, because its entire premise – that the cost of terminating ISP-bound traffic is far less than the cost of terminating voice traffic – is incorrect.

The incumbents argue, for example, that CLECs use scaled-down, and less costly, switches with fewer features to serve ISPs (sometimes called "softswitches"). *See, e.g.,* Letter from Robert Blau, et al., to Dorothy Attwood, dated Nov. 3, 2000, at 3 ("*ILEC Nov. 3 Letter*"). That is simply not the case. CLECs generally use traditional circuit switches today to serve ISPs, not scaled-down "softswitches." Virtually all of AT&T's ISP-bound traffic is today terminated using full circuit switches. Other CLECs, such as Focal, Time Warner, Allegiance, Pac-West, and e.spire have all shown that they also use traditional circuit switches to terminate ISP traffic today. *See* Letter of John D. Windhausen (ALTS) and H. Russell Frisby (Comptel) to Kyle Dixon (FCC), dated March 16, 2001, at 4. As a California ALJ recently found, "CLECs generally use fully functional switches that offer both originating and terminating functions, and that are used to serve all of their customers, not just ISPs [Thus,] whatever cost savings the CLECs may be

able to achieve in successfully managing their switching resources, there is no basis to conclude that they fail to provide complete functionality on par with that offered by the ILECs.” See *Order Instituting Rulemaking on the Commission’s Own Motion into Reciprocal Compensation for Telephone Traffic Transmitted to Internet Services Providers Modems*, No. 00-02-005, Proposed Decision of ALJ Pulsifer, pp. 53-54 (Dec. 7, 2000) (“*California Decision*”).

The ILECs also claim that CLECs use “trunk to trunk” switching to serve ISPs, which the incumbents claim is cheaper than the “trunk to line” switching that is traditionally used to serve voice customers. *E.g.*, *ILEC Nov. 3 Letter* at 3. This claim is also baseless. Whether a CLEC uses trunk-to-trunk or trunk-to-line switching has no impact on the traffic sensitive costs that are the subject of reciprocal compensation rates. As the California ALJ found, “whether traffic is provided over a trunk facility or a line facility, the job of the switch in terms of mapping calls to their predetermined destination points remains the same. While certain specific switch components may differ between trunk and line switching, the two primary traffic-sensitive cost drivers within a switch (*i.e.*, capacity-switch fabric costs measured in time slot availability, and processing time, measured in milliseconds) remains the same.” *California Decision* at 66. Thus, even if CLECs did generally use trunk-to-trunk switching for ISP-bound traffic,¹ that would provide no basis for lower compensation rates for that traffic.

The ILECs’ claims that CLECs’ termination costs are lower because their networks are configured differently are likewise baseless. As AT&T has previously shown, and as the California ALJ found, the principal differences between ILEC and CLEC networks “arise largely in the relative mix of the switching and transport components.” *California Decision* at 50; AT&T Comments at 17-22 (July 21, 2000). ILECs typically have a hierarchical network, with many switches and end offices; CLECs, with far fewer customers, employ fewer switches and more fiber-optic transport. As the California ALJ found, however, “while the differences in network configurations between ILECs and CLECs may result in various differences in costs, those differences generally do not relate to traffic-sensitive terminating transport and switching costs that are the subject of reciprocal compensation. Rather, they relate to the non-traffic-sensitive costs that are already recovered from end-users.” *California Decision* at 53.²

¹ In the California proceeding, Pacific Bell’s own witness conceded that the mere fact that a CLEC uses ISDN PRI trunks to connect an ISP to its network does *not* mean that the CLEC is performing trunk-to-trunk switching. See *California Decision* at 64-65 (“it is impossible to determine whether a CLEC switch is performing trunk-to-line or trunk-to-trunk switching or both unless one has examined each particular switch and identified how ISDN-PRI facilities are configured”).

² Pacific Bell had argued that “while the ILEC is required to maintain a network that serves all types of customers over a wide geographic area, CLECs may pick and choose which types of customers to serve, such as ISPs.” *California Decision* at 49. Pacific Bell argued that CLECs therefore “can limit the number of facilities that they build, and deploy lower cost networks with less functionality than Pacific’s,” and that “ISPs are frequently

A recent incumbent LEC study also confirms that the incumbent LECs have submitted greatly inflated projections of the future growth of dial-up ISP traffic in an attempt to convince the Commission to adopt the most restrictive ratio caps possible and thus jerry-rig the largest possible reduction in reciprocal compensation payments over the transitional period.³ AT&T has previously demonstrated that the ILECs' claims in this regard are baseless. See Letter from Stephen C. Garavito (AT&T) to Magalie Roman Salas (FCC), dated November 28, 2000, at 3-5 ("*AT&T Nov. 28 Letter*"). A study just released by SBC removes any doubt on the issue. In the study, SBC indicates that its dial-up Internet users currently spend an average of 7.5 hours/week online. See SBC Press Release, "Survey Says: DSL Users Addicted to Broadband," April 3, 2001. That is consistent with – indeed, lower than – AT&T's estimate of 8 hours/week, and far lower than the estimates that SBC used in this proceeding to calculate the growth of ISP traffic (9.5 hours/week in 2000 and 12 hours/week in 2001). SBC's own study thus confirms what the CLECs have been saying all along – that the marketplace, coupled with declining rates for reciprocal compensation for all traffic, is already addressing whatever reciprocal compensation "problem" may have existed in the past.

In sum, there is no sound basis for ratio caps for ISP-bound traffic. The Commission has consistently found that CLECs incur real costs to terminate ISP-bound traffic, and none of the incumbent LECs has offered any credible evidence that ISP-bound traffic uniquely results in traffic-sensitive costs that differ generally and significantly from the cost of terminating any other traffic. Equally important, in designing ratio caps, lowered rates, and "growth ceilings" in order to reduce the incumbents' overall reciprocal compensation payments on a "transitional" basis, the Commission is necessarily prejudging the larger issue of whether reciprocal compensation (and other intercarrier compensation) should ultimately be bill and keep. The Commission's notice in this proceeding was limited to ISP-bound traffic, and did not indicate that the Commission was

collocated in the CLEC central offices." *Id.* The ALJ concluded that none of these differences in CLEC networks affected the traffic-sensitive costs that are the subject of reciprocal compensation rates. *Id.* at 53.

Moreover, the two dissenting commissioners did not make definitive findings on the magnitude of alleged cost differences between voice and ISP-bound traffic in their alternative proposed decision. See *Order Instituting Rulemaking on the Commission's Own Motion into Reciprocal Compensation for Telephone Traffic Transmitted to Internet Services Providers Modems*, No. 00-02-005, Alternate Proposed Decision of Commissioners Neepser and Duque, pp. (Dec. 21, 2000) ("the cost differences have not been precisely identified in this record"). They argued that CLEC's use of "trunk to trunk" switching may result in a "slight" difference in cost, that reciprocal compensation "may overcompensate" CLECs when they use ISDN-PRI connections, and that CLECs do not currently use "softswitches" to terminate ISP-bound traffic. *Id.* at 48, 55, 72; see generally *id.* at 42-74.

³ See, e.g., Letter from Robert Blau (ILECs) to Dorothy Attwood (FCC), dated January 16, 2001 ("The whole idea of a transition in the context of reciprocal compensation is to reduce payments over time.").

contemplating implementing the initial steps of such a fundamental change in reciprocal compensation arrangements. Moreover, it is widely reported that the Commission will issue a notice on comprehensive proposals to reform all existing inter-carrier compensation mechanisms. Rather than pre-judging the outcome of that proceeding by effectively setting reciprocal compensation on the path to a particular outcome, the Commission should resolve these broader questions only on the basis of a full and complete record in the upcoming proceeding. *See* AT&T Nov. 28 Letter at 6. Nor is there any legal basis for the ratio caps, because each of the various features of the scheme – the ratio cap, the percentage reductions in state-determined rates that apply above the cap, and the “growth ceilings” – are transparently arbitrary and designed to reduce the incumbent LECs overall reciprocal compensation payments. *See, e.g., Time Warner Entertainment Co., L.P. v. FCC*, No. 94-1035 (D.C. Cir., March 2, 2001) (“the FCC seems to have plucked [the numbers] out of thin air”).

Sincerely,

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